198584

BENTONITE
Performance Minerals

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MAIL MANAGEMENT
STB

VIA FEDERAL EXPRESS COURIER

May 15, 2000

Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

MAY 16 2000

Part of
Public Record

RE: STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures

Enclosed are an original and 25 copies as well as an electronic copy of the Comments of Bentonite Performance Minerals in this proceeding.

Sincerely,

Richard L. Jones

Richard L. Jones
Manager, Domestic and Export Traffic

Cc: All Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582 (Sub-No. 1)

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Office of the Secretary

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Part of
Public Record

MAJOR RAIL CONSOLIDATION PROCEDURES

WRITTEN COMMENTS OF
BENTONITE PERFORMANCE MINERALS

My name is Richard L. Jones. I am Manager, Domestic and Export Traffic for Bentonite Performance Minerals (BPM), Denver, Colorado. I have held this position since 1991. My responsibilities in this position for BPM require me to be familiar with the relative costs of the available options to meet BPM's transportation needs.

The Surface Transportation Board (STB) has issued an Advance Notice of Proposed Rulemaking in Ex Parte 582 (Sub-No. 1), Major Rail Consolidation Procedures. The decision requests comments on a number of areas that might become the subject of new rules dealing with railroad mergers in the future. I request the STB consider the comments provided here and include them as part of the record in the proceeding.

BPM mines, processes, and markets bentonite clay and related products from four facilities in Wyoming, Iowa, and Missouri. Three of the four facilities are rail served direct while the forth is served by rail - truck transload. In 1999 the plants in Wyoming shipped 8,660 rail cars; 326 of these cars went to the plants in Iowa and Missouri.

Bentonite clay is a low value product, which is heavily dependent on rail transportation to reach markets domestically and internationally. Transportation costs are two to three times the value of the product domestically and three to four times the product value internationally. Without adequate rail services we could not continue in business.

The bentonite industry is important economically to the areas of northern Wyoming and western South Dakota. BPM's exports of about $7 million annually are important to the United States' balance of foreign trade.

While the current regulations generally encourages initiative that lead to rationalization of the nations rail facilities, the point has been reached where they no longer need to be encouraged. We are now left with four major railroads in the United States, Burlington Northern Santa Fe (BNSF), Union Pacific (UP), Norfolk Southern (NS), and CSX Transportation (CSXT). When the current regulations were enacted they were not intended to "rationalize" the number of major carriers down to one or two.

The current regulations also provide for mergers not to be in the public interest: if potential harm would result from a reduction of competition, or harm to essential service needs.

As the result of the size the four major railroad have been allowed to attain by recent mergers, future mergers should be determined with the "overall effect" on rail transportation and the national economy considered and not just the effects on the customers on the lines involved.

Future railroad mergers should not be allowed if the merged railroad results in an entity the size of which prohibits future competition, which a merger of any two of the four would. Now the proposed merger between the CN and BNSF has brought the two major

Canadian railroads into the picture. A merger of one of the major Canadian railroads and one of the US majors would also fall into this category.

The United States has always had a policy of breaking up companies if their size reached monopolistic proportions. A good example is Microsoft Corporation, which is being scrutinized for break-up because of their dominance in certain segments of the software industry. Yet another company with enough capital and a better computer operating system could challenge Microsoft. In the case of a railroad it is impossible for a new competitor to raise enough capital and obtain necessary right-of-way to challenge one of the four major U.S. railroads.

If any of the four major U.S. railroads (or any of the four and one of the two major Canadian railroads) were allowed the to merge they would exercise market dominance over shippers and short line carries on the newly merged line. In addition, the opportunity would exist for the newly merged railroad to provide rates to industries on there line in a effort to harm competing industries on other lines in order to obtain market dominance in that industry.

No railroad merger should be allowed which could threaten or influence the United States' national defense or its responsiveness to national emergencies. No railroad merger should be allowed where a U.S. carrier, or a large part of a U.S. carrier, is controlled in any manner by an entity outside of the United States. A merger of the BNSF and CN would be controlled in Canada.

When considering a merger of one of the four major U.S. railroads or a merger of one of the four major U.S. railroads and one of the two Canadian railroads there are simply not enough conditions to make the newly merged carrier less monopolistic. This is especially true when consideration is given to the inevitable mergers that will follow resulting in two or three railroads in North America.

Respectfully submitted,

Richard L. Jones
Manager, Domestic and Export
Traffic
Bentonite Performance Minerals
410 Seventeenth St., Suite 800
Denver, CO 80202

Date: May 15, 2000

CERTIFICATE OF SERVICE

In accordance with the Surface Transportation Board's Order of April 28, 2000, a copy of the foregoing has been served by United States mail, postage pre-paid, to all parties of record this 15th day of May, 2000.

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Richard L. Jones
Manager, Domestic and Export Traffic
Bentonite Performance Minerals
410 Seventeenth Street
Denver, CO 80202